IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 58 OF 1995

Jagannath Babu Shetty,
Aged 30 years, Occ. Service,
R/o Hotel Shiv Prasad,
Near Shankar Mandir,
Mumbra, Thane
(At present is in
Arthur Road Jail) ...Appellant.

Versus

The State of Maharashtra ...Respondent

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None for the appellant.

Shri. A.S. Shitole, A.P.P. for Respondent.

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CORAM: SMT. V.K. TAHILRAMANI, J.
DATED: 14TH SEPTEMBER, 2004

ORAL JUDGMENT:-

1. Through this appeal, the appellant challenges the judgment and order dated 10.1.1995 passed by the learned Additional Sessions Judge for Greater Bombay in Sessions Case No.1141 of 1992. By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 498-A of I.P.C. and sentenced him to suffer R.I. for two years and to pay fine of Rs.1,000/- i/d R.I.for six months.

2. The prosecution case briefly stated is as under:-

. That deceased Vijyalaxmi was married with the appellant-accused on 29.4.90 in Karnataka. At the time of marriage, the appellant was running pan shop at Ghatkoper and he was living in a hotel as he did not have a room of his own. After the marriage, Vijyalaxmi came to Bombay and the appellant and Vijyalaxmi resided with the brother of Vijyalaxmi for three months. Thereafter, the appellant shifted to his own room in that area i.e. in Ghatkopar.

. It is the prosecution case that from that time till Vijyalaxmi died due to burn on 31.3.92, she was ill-treated by the appellant on account of demand of Rs.500/- and Rs.3,000/- to enable the appellant to purchase a Pan Beedi shop. Vijyalaxmi complained to her brother P.W.1 Sudhakar Shetty that the appellant had taken away all the ornaments one by one and threatened her not to disclose this fact to anyone.

. On 30.3.92 when Vijyalaxmi was in the house she caught fire. She was admitted in the hospital at about 5.15. p.m. on 30.3.1992. In the hospital she gave statement to the Investigating Officer and the S.E.M. Vitthal Sonwane. In her statement she has stated that while she was preparing tea, the stove suddenly burst and she was burnt. Vijyalaxmi

succumbed to her injuries on 31.3.1992 at 3.10 a.m. On getting message from Rajawadi Hospital, Police Officer P.W.9, P.S.I. Gadekar went to the hospital alongwith S.E.M. Vitthal Sonwane. Both P.S.I. Gadekar and S.E.M. Sonwane recorded the statement of Vijyalaxmi. In the said statement Vijyalaxmi has stated that she received burn injuries due to bursting of stove. A.D.R. case No. 46 of 92 came to be registered. Meanwhile Vijyalaxmi succumbed to burn injuries and body was sent for post mortem. Statement of a brother of Vijyalaxmi came to be recorded on 31.3.92. Thereafter on 17.4.92 statement of Sudhakar Shetty (P.W.1) who is another brother of Vijyalaxmi came to be recorded. On the basis of his statement, C.R. No. 173 of 1992 came to be registered under Sections 498-A, 304-B, 306 and 406 of I.P.C. After completion of investigation charge sheet came to be filed.

3. In due course, the case was committed to the Court of Sessions. Charge came to be framed against the appellant under Section 498-A, 304-B and 302 of I.P.C. Appellant pleaded not guilty to the said charges and claimed to be tried. The defence of the appellant is that of total denial. In the present case, the prosecution has examined in all 10 witnesses in order to prove the charges. These witnesses included three brothers of

Vijyalaxmi viz. complainant P.W.1 Sudhakar Shetty, P.W.2 Jayakar Shetty, P.W.6 Shekhar Shetty and P.W.3 Shakuntala Shetty i.e. the wife of Shekhar Shetty.

4. On perusal of all the evidence, the learned Sessions Judge acquitted the appellant U/sec. 302 and 304-B of I.P.C. However, he convicted the appellant for the offence under Section 498-A of I.P.C. Hence, this appeal.

5. Yesterday when the matter was called out, none appeared on behalf of the appellant. So also today none appeared on behalf of the appellant. Hence, in view of the decision of the Supreme Court in the case of **Bani Singh & Ors. Vs. State of Uttar Pradesh reported in 1996 Cri.L.J. 3491,** I have carefully perused and scrutinised the entire evidence on record as well as the documents which have been exhibited in the present case and the judgment and order of the learned Sessions Judge. After carefully scrutinising the entire record in this case, this appeal is being disposed of on merits.

6. The prosecution case mainly rests on the evidence of three brothers of Vijyalaxmi i.e. P.W.1 Sudhakar Shetty, P.W.2 Jayakar Shetty and

P.W.6 Shekhar Shetty. P.W.1 Sudhakar Shetty is the complainant in the present case. Sudhakar Shetty has stated that the appellant was married to his sister Vijyalaxmi on 29.4.90 at their native place in Karnataka. They bore the expenses for the marriage for both sides. In the said marriage they gave Vijyalaxmi two gold bangles, one necklace, three rings and one gold chain. At the time of marriage, the appellant was running a pan shop and he was living in a hotel, hence for few months Vijyalaxmi and appellant resided with him at Dombivli. Thereafter, the appellant got a room in Ghatkopar and he took Vijyalaxmi with him. Thereafter, till her death Vijyalaxmi and the appellant resided at Ghatkopar.

7. Sudhakar has further stated that his sister Vijyalaxmi did not make any complaint to him against the appellant as he (Sudhakar) was under pressure of loans taken for the marriage of Vijyalaxmi. However, on 6.3.91 he learnt from Vijyalaxmi that the appellant had pledged all her ornaments given to her by them in her marriage. Thereafter, on 31.3.92 at about 5.30 in the morning he received the message that Vijyalaxmi was burnt and she had died. Thereafter, he lodged his complaint (Exh.8) against the appellant. From the evidence of this witness the only thing which has come on record is that the appellant has pledged

all the ornaments given to Vijyalaxmi during the marriage by the family members of P.W.1 Sudhakar Shetty. However, in this connection, it would be pertinent to see the evidence of P.W.5 Labchand Singhavi. Labchand Singhari has stated that he was a goldsmith and licensed money lender. He knew the appellant because the appellant had a pan shop by the side of the shop of this witness. On 27.9.91 the appellant came to the shop of this witness. The appellant had brought gold chain (Har) and he pledged it for raising money for purchasing a room. Labchand Singhavi took the chain (Article-2) from the appellant and gave him Rs.5,000/-. However, in the cross examination of this witness it has also come on record that the wife of the appellant had also accompanied him at the time when the Har was pledged by the appellant. Looking to the fact that Har was pledged to purchase a room for the appellant and Vijyalaxmi to reside in and the fact that Vijyalaxmi accompanied the appellant when the Har was pledged, it appears that Vijyalaxmi had voluntarily handed over her Har to the appellant for being pledged to raise money to purchase a room. No other incident of any ill-treatment or harassment has been stated by P.W.1 Sudhakar Shetty.

8. The prosecution has also examined P.W.2 Jayakar

Shetty who is another brother of Vijyalaxmi. P.W.2 Jayakar Shetty has stated that his sister Vijyalaxmi did not make any complaint to him about her married life. Thus, his evidence is of no use to the prosecution.

9. The other witness is P.W.6 Shekhar Shetty who is also a brother of Vijyalaxmi. This witness has stated that on 30.3.92 his neighbour received a telephone message and informed Shekhar Shetty that Vijyalaxmi had caught fire due to accident i.e. bursting of stove. On reaching to the hospital he enquired Vijyalaxmi as to what happened. Vijyalaxmi told him that her husband poured kerosene on her person and set her on fire. In the cross examination of this witness it has come on record that the appellant telephoned to the neighbour of Shekhar Shetty and gave information to her i.e. the neighbour of Shekhar Shetty which she conveyed to P.W.6 Shekhar Shetty. In this connection, it is pertinent to note that when immediately after incident Vijyalaxmi was brought to the hospital her statement (Exh.23) came to be recorded by P.W.9 P.S.I. Shantaram Gadekar. Statement of Vijyalaxmi was also recorded by S.E.M. Vithal Sonwane (Exh.24). In the statement to P.S.I. Gadekar, Vijyalaxmi told him that on 30.3.92 at about 4.00 p.m. she was preparing tea

and her husband was having bath, at that time suddenly the stove burst and her nylon saree caught fire. When she shouted for help, her husband came running there and he extinguished the fire on her person. Thereafter, her husband immediately took her to Rajawadi Hospital. She has specifically stated in the statement recorded by P.W.9 P.S.I. Gadekar that she had no complaint against anyone and her relations with her husband were good. In view of the statement given by Vijyalaxmi, I do not find it safe to rely on the evidence of P.W.6 Shekhar Shetty wherein he has stated that Vijyalaxmi told him that her husband set her on fire.

10. The prosecution has also examined P.W.3 Shakuntala Shetty who is the sister-in-law of Vijyalaxmi. This witness has stated that Vijyalaxmi used to come at their house. During two of her visits Vijyalaxmi told Shakuntala that her husband used to beat her under the influence of liquor. Nothing has been elicited in the cross examination of this witness so as to disbelieve her testimony. Besides this witness, the prosecution has examined an independent witness i.e. P.W.7 Meenakshi Kotian. Meenakshi Kotian was the neighbour of Vijyalaxmi and the appellant. She knew both of them. Meenakshi Kotian has stated

that Vijyalaxmi used to come to her house. On one occasion she told Meenakshi Kotian that she was beaten by her husband and due to this beating she had miscarriage. Nothing has been brought out in the cross examination of this witness so as to discredit her testimony. As stated earlier, she is an independent witness. No animus, grudge or enemity between Meenakshi and the appellant has been brought on record, for Meenakshi to falsely implicate the appellant. I find the evidence of Meenaskhi Kotian and Shakuntala Shetty to be worthy of reliance. From the evidence of both these witnesses it is seen that the appellant used to beat Vijyalaxmi and ill-treat her. Thus, the learned Sessions Judge has rightly convicted the appellant U/section 498-A of I.P.C.

11. After Vijyalaxmi was taken to hospital she came to be examined first by Dr. Ashwini Desai. Dr. Ashwini Desai prepared case paper (Exh.12). In the said case paper, the history of burns was given as an accidental burns. P.W. 4 Dr. Anand Uttare has stated that burns were to the extent of 78% superficial to deep burns. In the present case death has occurred on account of shock due to 78% superficial to deep thermal burns. From the evidence on record it is clear that Vijyalaxmi sustained burns due to accident. After she caught

fire she shouted for help and the appellant extinguished the fire and immediately took her to hospital. From this it is also clear that the appellant had nothing to do with the receiving of burn injuries by Vijyalaxmi. However, from the evidence on record specially that of P.W.3 Shakuntala Shetty and P.W.7 Meenakshi Kotian it is clear that the appellant used to beat and ill-treat Vijyalaxmi. Thus, as observed earlier, the learned Sessions Judge has rightly convicted the appellant U/sec. 498-A of I.P.C.

12. The only question which remains to be decided now is about the sentence imposed on the appellant. I have already observed earlier that Vijyalaxmi accidentally caught fire, the appellant had extinguished the fire and immediately shifted Vijyalaxmi to hospital. It may be noted here that while extinguishing the fire, the appellant had also sustained burn injuries. The learned Sessions has imposed substantive sentence of two years R.I.. Out of the total sentence of imprisonment of two years, the appellant has already undergone about 19 months of imprisonment. Looking to the fact that the incident had occurred about twelve and half years ago, I am of the opinion that in the facts and circumstances of the present case, the sentence of imprisonment may be reduced to the period

already undergone by the appellant. In this view of the matter, the sentence of imprisonment is reduced to the period already undergone by the appellant. The sentence of fine of Rs.1,000/- is maintained.

13. Criminal Appeal is partly allowed.